

## APPEAL NO. 010032

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on November 29, 2000, the hearing officer resolved the disputed issues by determining that the appellant (claimant) did not sustain a compensable occupational disease injury, that the claimant did not have disability, and that the respondent (self-insured) is relieved of liability pursuant to Section 409.002 because the claimant failed to timely notify her employer pursuant to Section 409.001 and failed to show good cause for her untimely notice. The claimant appeals and asserts, in effect, that the hearing officer has failed to credit her medical evidence and the testimony of her assistant at the hearing. The self-insured contends in response that the evidence is sufficient to support the challenged determinations.

### DECISION

Affirmed.

The claimant testified that while employed by (employer) and performing duties including the typing of hearing officers' decisions, answering the telephone, and mailing forms to claimants, she sustained a low back injury from repeatedly bending down to pick up her computer "mouse," which frequently fell off her desk; from reaching up at her workstation to obtain forms; and from using a chair which was not ergonomically adequate. She further stated that she experienced back pain at work on \_\_\_\_\_; that she saw Dr. S for this pain on February 21, 2000, and was given medication; that she saw Dr. S again on February 23, 2000, because the medication was not helping; that on the latter date Dr. S asked her about her job duties and related her back symptoms to her work; and that she told her supervisor on that date that she had a work-related back injury. The claimant said that her supervisor failed to take any action on her report and conceded that she did not file her Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41) until May 4, 2000, explaining that she was afraid of losing her job if she filed a claim. Her TWCC-41 stated that her injury/occupational disease occurred "while sitting long periods of time typing documents." Several reports from Dr. R and Dr. L, from whom she received treatment after being advised that Dr. S did not treat workers' compensation injuries, referred to her having had an "accident" on the job on \_\_\_\_\_.

The hearing officer's discussion of the evidence makes clear that he did not find the claimant's evidence persuasive in meeting her burden of proof on the disputed issues. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). We are satisfied that the hearing officer's factual determinations are not so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

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Philip F. O'Neill  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Robert W. Potts  
Appeals Judge